IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Crim. Rev. Application No. 163 of 2006

Mr.Neville Mukadam ..Applicant

vs.

1. Dinshaw Kaiki Tamboly
and another ..Respondents

Shri Shrikant Bhat with Shri Umar Wagle for applicant.
Shri Sanjay Parab for respondent no.1.
Shri R.More, A.P.P. for respondent no.2.

CORAM: S.C.DHARMADHIARI J.
15th December,2006

P.C.

1. Heard the learned Counsel.

2. Two points have been canvassed by Shri Bhat to assail the order passed by the Additional Sessions Judge in Crim.Rev.Application No.762 of 2005 dated 29th December, 2005.

3. His first submission is that the above criminal revision application was filed by the first respondent/original applicant challenging the order dated 13th November, 2003 which was passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in complaint

no.1258/S/2003 issuing process and summoning the first respondent.

4. Shri Bhat submits that prior thereto an application was made by this very respondent seeking recall of the order issuing process. In other words, not only he sought recall of the order issuing process but discharging him from the case itself. The application was argued and it was rejected by the Metropolitan Magistrate on 6th July, 2004. The original accused no.2 then carried that order in revision by filing Criminal Revision Application No.755 of 2004 and the same was rejected on 25th February, 2005. The matter was brought in this Court by application under sec.482 of the Code of Criminal Procedure. Criminal Application No.3503 of 2005 was placed before a learned single Judge of this Court and it was decided exparte. In other words, the applicant/accused no.2 alone was heard whereas the complainant was not put to notice.

5. That apart, his submission is that the order issuing process is dated 13th November, 2003. In pursuance to the liberty granted by this Court Crim.Revision Application no.762 of 2005

had been instituted to challenge this order. The very date of its institution would show that the Revision Application was hopelessly time barred. There is no application to condone the delay nor the delay was condoned by the order passed by this Court. In such circumstances, the order under challenge is exfacie bad in law and should be set aside on this count alone.

6. His second submission is that the order interferes with the issuance of process. The learned Additional Sessions Judge ought to have appreciated that at that stage elaborate and detailed enquiry into all materials is not at all warranted and wholly unnecessary. When the complaint discloses prima facie commission of offence punishable under sec.500 to 502 of I.P.C. on the basis that the complainant is defamed, then, there was no warrant in concluding that accused no.2 has absolutely no role to play. In other words, accused no.2 being not Editor, printer, Reporter or owner of publication, he cannot be proceeded against is a conclusion wholly erroneous and exfacie unsustainable in law. In such circumstances, revisional court exceeded its jurisdiction in interfering with the order of issuing process.

7. Shri Parab on the other hand supported the impugned order.

8. With the assistance of learned counsel appearing for both sides, I have perused the complaint, verification statement and order under challenge. I have also perused the order of the learned single Judge of this Court.

9. If the applicant had fullfledge opportunity of demonstrating before the revisional court that the conmplaint discloses an offence, there is prima facie material before the Court for issuance of process, then, no useful purpose will be served in accepting the submission that the revision application ought to have been dismissed on the ground of limitation. Unless and until serious prejudice and grave miscarriage of justice is pointed out it is not for this Court to exercise its revisional power and interfere. In my view, once the applicant before me had every opportunity before the Sessions Court, despite his absence before this Court and the revisional court heard both sides at length then greivance of Shri Bhat does not survive. In the peculiar facts of this case, it

is not necessary to throw out the revision application as being time barred.

10. Second submission also need not detain me. The learned Additional Sessions Judge upon perusal of the complaint and verification statement has concluded that the complaint is wholly silent with regard to the role of respodnent no.1/original accused no.2. Once in the facts of this case it is discovered that publication is not by him nor is the newspaper/publication owned or controlled by him, then, it was futile to implead him. The larger controversy as to whether the complainant was aggrieved by the entire exercise being allegedly financed by the original accused no.2 and, therefore, his impleadment as an accused need not be gone into in this case. The observations of the learned Additional Sessions Judge to the effect that merely because the complainant says that some other person was also responsible for publication does not necessarily mean that the said person also should be asked to face trial have to be viewed in the peculiar factual background and the allegations in the complaint. It is not necessary for me to go into any larger question more so about the

provision of Press and Registtration of Books Act, 1857 at this prima facie stage. The learned Judge has observed that there is no prima facie material against Original Accused No.2. Hence, process could not have been issued against him.

11. Considering the complaint and verification statement I do not feel that the Additional Sessions Judge was in error in holding that the material on record does not disclose any offence as far as the original accused no.2 is concerned. The process, therefore, ought not to have been issued. In the peculiar facts of this case, interference by the revisional court in the order of issuing process against accused no.2 is, therefore, justified.

12. This is not a case for interference in revisional jurisdiction of this Court. Revision application is summarily rejected.

(S.C.DHARMADHIKARI J.)